

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7/6/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.11526 of 2019

A.Abdul Aziz ... Petitioner

Vs

1. The State of Tamil Nadu
rep. By its Secretary to Government
Department of Education
Fort St. George
Chennai 600 009.
 2. The Director of School Education
Office of the Directorate of School Education
College Road, Nungambakkam
Chennai 600 006.
 3. The Chief Educational Officer
Master Plan Complex
Villupuram 605 602.
Villupuram District.
 4. The Head Master
Government Muslim Urdu High School
Gingee 604 202.
Villupuram District.
- Respondents

Prayer Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to upgrade to Urdu Muslim Linguistic Minorities Higher Secondary School, Gingee, Villupuram District, as per the representation of the petitioner, dated 14/11/2017.

For petitioner	... Mr.P.Ganesan
For respondents	... Mr.K.Karthikeyan Government Advocate

O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Mandamus sought for in this writ petition is to direct the respondents, to upgrade the existing School as Urdu Muslim Linguistic Minorities Higher Secondary School, Gingee, Villupuram District, as per the representation of the petitioner, dated 14/11/2017.

2. Petitioner has submitted that the School was initially started as a primary School, which was later on upgraded as a middle School in 2005 - 2006 and further, upgraded as High School in 2011-12. It is stated that School is functioning smoothly for the last five years. It is stated that the School possessed all the requisite infrastructure for a higher Secondary School. It is stated that School Management Development Committee, petitioner and the villagers have requested the education department to upgrade the School into Urdu Muslim Linguistic Minorities Higher Secondary School and also remitted a sum of Rs.1,00,000/- to the Government account on 21/8/2017 and another sum of Rs.1,00,000/- into the government account on 8/5/2018 as public contribution for upgradation. Despite the fact that the School possessed all the infrastructural facilities, respondents are not taking any steps to upgrade the School. Petitioner has submitted that the School is not being upgraded because it is the stand of the Government that School is not fulfilling the conditions of G.O.Ms.No.235, School Education Department, dated 25/5/1997.

3. Notice was issued on the respondents. Chief Educational Officer, Villupuram, third respondent has filed counter affidavit. Averments made in the counter reads as under:-

"5. It is stated that the Government Muslim Urdu High School, Gingee was established during the year 2011 - 12 by upgrading the existing Panchayat Union Muslim Urdu Middle School in the year 2011 (Vide G.O.Ms.No.199 School Education Department, dated 7/12/2011) and is running smoothly without any difficulty or hardship. The School is located in an extent of 0.95 acres of land with a play ground to the extent of 1.00 acres of land. The villagers of the said village have decided to have the Government Muslim Urdu High School in the village to be upgraded as Government Muslim Urdu Higher Secondary

School and remitted a sum of Rs.2,00,000/- into Government account in two spells (on 21/8/2017 and 8/5/2018 - Rs.1,00,000/- each, as public contribution and applied for upgradation. The said proposal was submitted by the third respondent herein to the Director of School Education , Chennai 6, who is the second respondent herein for onward submission to the Government, on 17/5/2018.

It is also submitted that remitting of public contribution of Rs.2,00,000/- into Government is not only the criteria for upgrading the Government High School into Higher Secondary School, but also the following important conditions laid down in G.O.Ms.No.235 School Education Department, dated 24/5/1997 should also be fulfilled.

(i). The minimum distance between on Higher Secondary School and the Higher Secondary School for purpose of upgradation shall be 8 kms.

(ii). The schools, other than the urban areas shall have five acres of land inclusive of play ground area.

(iii). The schools should have adequate buildings, accommodation and other infrastructure facilities.

(iv). The strength in standard X of the proposed school should not be less than 100.

(v). Priority shall be given for the opening of Girls Institutions.

(vi). The number of schools to be selected for a year may be fixed by the Government depending upon the budget provisions of the respective year.

As the other conditions except the remittance of public contribution for up-gradation of the School are not fulfilled, the School was not selected for upgradation and orders were not issued by the Government in the past year.

6. It is stated that the following 2 Higher secondary Schools are situated within a radius of 8 kms from the school in question.

1. Raja Desingu Government Boys Higher Secondary School, Gingee is 3 Kms.

2. Government Girls Higher Secondary School, Gingee is 3 kms.

Even though the Government Muslim Urdu High School, Gingee is having sufficient accommodation and infrastructure facilities, the total strength of X standard students is only 9 (Urdu medium 3 and English medium 6) out of the total strength of 55 from 6th to 10th standards.

7. It is stated that the main condition in the norms for the upgradation of the High School into Higher Secondary School is of no Higher Secondary School should function within a radius of 8 kms from the proposed school. In the instant case, 2 Government Higher Secondary Schools are functioning within a radius of 8 kms from the proposed school and therefore, the said condition is not fulfilled. Other important conditions like the area of the school land including play ground should be 5 acres of land and the strength of students in X standard should be not less than 100 which are also not fulfilled as stated supra. Hence the matter of according permission for the upgradation of the Government Muslim Urdu High School, Gingee into Government Muslim Urdu Higher Secondary School is not feasible at present and it may be considered by the Government in future."

4. Heard Mr.P.Ganesan, learned counsel for the petitioner and Mr.K.Karthikeyan, learned Government Advocate for the respondents.

5. In the State of Tamil Nadu, government schools are functioning on the basis of executive instructions issued under Article 162 of the Constitution of India. In respect of Private schools, there is an Act, namely, Tamil Nadu Recognised Private Schools Regulation Act, 1973 and rules have been framed. As per section 3 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the government may regulate the different stages of education and courses of instruction in private schools.

6. Executive instructions have been issued under Article 162 of the Constitution of India. G.O.Ms.No.235, School Education Department, dated 24/5/1997 covers the issue relating to upgradation of Schools which reads as under:-

Government Of Tamil Nadu

ABSTRACT

EDUCATION - SCHOOL EDUCATION - Upgradation of High/Higher Secondary Schools - Permanent Criteria and norms for Upgradation of High/Higher Secondary Schools - Orders - Issued.

SCHOOL EDUCATION DEPARTMENT

G.O.Ms.No. 235
5-97.

Dated 24-

Read:

1. G.O.Ms.No. 981 Education, Science and Technology Department, Dated 21-5-82.
2. Government letter No.31480/E1/83-5 Education, Science Technology department, Dated 9-5-83.
3. Government Letter No. 150722/E1/85-2 Education, Dated 15-7-85.
4. Government Letter No. 706799/E1/89-7 Education, Dated 13-8-86.
5. Government Letter No. 7017/E1/89-2 Education, dated 19-4-89.
6. From the Director of School Education letter Rc.No. 11215/W13/96, dated 31-1-97.

ORDER:

In Government order first read above as subsequently amended in the Government letter second to fifth read above, Government have constituted a High Level Committee to scrutinize the various proposals received for the Upgradation of High/Higher Secondary Schools and to make recommendations to Government for Upgradation of High/Higher Secondary Schools.

2. While constituting the High Level Committee, the Government have permitted the committee to evolve the criteria and Higher Secondary Schools. Accordingly, the committee evolved criteria and norms every year as and when they met but they are not of permanent nature. Government therefore consider it essential, to formulate uniform and permanent type of criteria/norms for upgrading of High and Higher Secondary Schools. Accordingly, the Director of School Education in his letter sixth read above has submitted the permanent type of criteria and norms for Upgradation of High and Higher Secondary Schools, based on the present requirements to cater to the educational needs of the area, high and higher secondary schools and requested approval of the same.

3. The Government, after careful examination, direct that the criteria and norms as detailed in the

annexure I and II to this order be followed for upgradation of Government/Panchayat Union/Corporation/Municipality Middle schools into High Schools and for upgradation of High schools into Higher Secondary Schools from 1997 academic year.

4. This order issued with the concurrence of the Finance Department vide its U.O.No.2390/FS/P/97 dated 16-5-97.

// BY ORDER OF THE GOVERNOR //

M.A.GOWRISHANKAR,
SECRETARY TO GOVERNMENT,

To

The Director of School Education, Chennai - 6.
The Joint Secretary to Government (School Education)
School Education Department, Chennai-9.

Copy to:

The Finance Department, Chennai-9.
The Adi Dravidar and Tribal Welfare Department,
Chennai-9.

The Municipal Administration and Water Supply
Department, Chennai-9.
The Senior Personal Assistant to Minister(Education),
Chennai-9.
The School Education Department(HS), Chennai.

ANNEXURE - I.

NORMS FOR UPGRADATION OF GOVERNMENT/PANCHAYAT UNION/
CORPORATION/MUNICIPALITY MIDDLE SCHOOLS INTO HIGH
SCHOOLS EVERY YEAR.

The number of schools to be selected for the year may be fixed by the Government depending upon the budget provision. सत्यमेव जयते

The schools should possess five acres of play area for Boys High School and Co-education High School and three acres of play area for Girls High School.

The schools should have remitted the Public contribution fixed by Government from time to time fully.

Priority to be given to the schools located in hill areas.

Priority to be given to the schools located in area where the population of Adidravidas is high.

The proposals for upgradation of Girls schools may be given due consideration.

The strength in Standard VIII should not be less than 50 pupils-relaxation in strength may be considered in the case of Adi-dravida schools.

Priority to be given to the schools where the feeder schools and the High Schools already functioning in that area do not meet the demand of the population of school age children of that area.

The school should have adequate buildings, accommodation and other infrastructure facilities.

The minimum distance between one high school and another high school for the purpose of upgradation shall be 5 kms.

ANNEXURE - II

CRITERIA AND NORMS FOR UPGRADATION OF HIGHER SECONDARY SCHOOLS.

The number of schools to be selected for the year may be fixed by the Government depending upon the budget provision of the respective year.

The schools, other than in urban areas shall have five acres of land and Schools in urban areas shall have three acres of land inclusive of play ground area.

The schools should have adequate buildings, accommodation and other infrastructure facilities.

The strength in Standard X of the proposed school should not be less than 100. However, this may relaxed in respect of Adi-dravida schools.

First priority shall be given to the schools which have remitted the public contribution fixed by the Government from time to time in full.

Priority shall be given for the opening of Girls institutions.

The minimum distance between one higher secondary school and higher secondary school for purpose of upgradation shall be 8 kms.

Priority shall be given to area where existing Higher Secondary school do not meet the demand of the local needs.

Priority shall be given to the schools in Hill area.

Priority to be given to the schools located in area where population of adi-dravida is high.

Opening of Girls Higher Secondary Schools shall be considered only by upgrading existing Girls High School and not by separation from existing co-education Higher Secondary Schools.

7. School Education is covered by Entry 25 in List III of the 7th Schedule of the Constitution of India. State Government,

is therefore, entitled to issue executive instructions, under Article 162 of the Constitution of India, framing guidelines.

8. In *Secretary, A.P.D. Jain Pathshala v. Shivaji Bhagwat* More reported in 2011 (13) SCC 99, the Hon'ble Supreme Court, at Paragraph 25, held thus,

"25. Article 162 of the Constitution, no doubt, provides that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters upon which the legislature of the State has competence to legislate and are not confined to matters over which legislation has been already passed. It is also well settled that so long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power under Article 162 cannot be circumscribed; and if there is no enactment covering a particular aspect, the Government could carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf."

9. In *Accountant General, State of Madhya Pradesh v. S.K.Dubey* reported in 2012 (4) SCC 578, the Hon'ble Supreme Court, at Paragraphs 30 and 31, held as follows:

"30. The moot question that falls for determination in this appeal is: whether in the absence of any express rule in the State Rules, was it open to the State Government of Madhya Pradesh to have provided by way of an executive Order dated 5-4-2002 that the service rendered by the respondent as President of the State Commission would be counted as pensionable service? The incidental question is: whether such order is inconsistent with Section 16(2) or the State Rules?"

31. Subject to the provisions of the Constitution, the executive power of a State extends to the matters with respect to which the legislature of the State has power to make laws. This is what is provided in Article 162 of the Constitution. In other words, the executive power of the State executive is coextensive with that of the State Legislature."

10. This executive instructions can be set aside only on the ground that they are violative of any Act, framed by the State

Government, which is competent to enact or that it is in violation of Article 14 of the Constitution of India inasmuch as it is arbitrary or unreasonable. G.O.Ms.No.235 which holds the field.

11. A perusal of the counter affidavit filed by the respondents would show that the total number of students, in tenth standard, is only 9 (Urdu medium 3 and English medium 6). In the abovesaid circumstances, it cannot be said that the School can be upgraded from high school to the higher secondary school. Accordingly, writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
State of Tamil Nadu
Department of Education
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Chennai 600 009.
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Gingee 604 202.
Villupuram District.

+1cc to Mr.P.Ganesan, Advocate Sr.45867
+1cc to the Government Pleader Sr.46228

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kk[co]
srg 29/07/2019